

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Joan M. Roberts

and

96-03092

Name of Respondent

PaineWebber, Inc.
John McFerran

REPRESENTATION OF PARTIES

Joan M. Roberts ("**Claimant**") was represented by William D. Nelson, Esq., Slivka Robinson Waters & O'Dorisio, Denver, Colorado.

PaineWebber, Inc. ("**Respondent PaineWebber**") and John McFerran ("**Respondent McFerran**") were represented by John S. Lutz, Esq., LeBoeuf, Lamb, Greene & MacRae, L.L.P., Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about July 19, 1996. Submission Agreement of Claimant Joan M. Roberts was signed on July 15, 1996.

Statement of Answer was filed by Respondents PaineWebber, Inc. and John McFerran on or about September 13, 1996. Submission Agreement of Respondent PaineWebber, Inc. was signed on September 13, 1996 by Joseph F. Generelli. Submission Agreement of Respondent John McFerran was signed on August 27, 1996.

HEARING INFORMATION

The hearing was held on Tuesday, April 29, 1997 for two (2) sessions and Wednesday, April 30, 1997 for one (1) session in Denver, Colorado for a total of three (3) sessions.

CASE SUMMARY

Claimant alleged that Respondents' conduct with respect to her account constituted violations of the Colorado Securities Act of 1990; Colorado Consumer Protection Act; breach of fiduciary duty; misrepresentation and common law fraud. Specifically, Claimant alleged that Respondents churned her account, made material misrepresentations and/or failed to disclose material facts. Claimant alleged that she advised Respondent McFerran that the money that she placed into the account was for her retirement. It was further alleged that Claimant gave Respondent McFerran discretion to trade her account since she was going to be travelling quite a bit and not available to discuss her trades.

Claimant stated that she did not understand the risks incident to option trading and the full extent of the risks were not disclosed to her. It was further alleged that during the period January 1, 1994 through the end of 1995 there were more than 110 transactions in Claimant's account. Claimant stated that the trading in her account was excessive and the securities purchased and sold in her account, as well as the level of activity in the account, were unsuitable for her based upon her then-current investment objectives, needs and risk tolerances.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated shortly after Respondent McFerran began handling the Claimant's account, Claimant advised him that she had additional funds to invest. Respondents also stated that Claimant advised him that she wanted to invest somewhat aggressively and that she ultimately intended to use the funds to purchase a condominium. Respondent McFerran recommended a strategy of writing covered options against long stock positions in good quality stock and explained that there is no guarantee that this program would provide the growth the Claimant sought.

Respondents stated that from the time Respondents McFerran exercised discretionary authority, it is apparent the accounts were not churned and that the investments were suitable and consistent with the strategy agreed upon. Respondents also asserted numerous affirmative defenses.

RELIEF REQUESTED

Claimant requested an award in an amount to be proved at the hearing but not less than \$70,000, costs of investigation and prosecution and reasonable attorneys' fees under C.R.S. §6-1-113(2)(b) and C.R.S. §11-51-604, and for such other and further relief as the arbitrators deem appropriate.

Respondents requested that the Statement of Claim be dismissed for failure to state a claim and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Claimant withdrew the claims asserted pursuant to the Colorado Consumer Protection Act.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents PaineWebber, Inc. and John McFerran shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$531.52 (**five hundred thirty one dollars and fifty two cents**) as compensatory damages.
2. Interest at the rate of 8% per annum is awarded on the above stated sum from and inclusive of June 5, 1995 to and inclusive of the date this award is paid in full.
3. Respondents PaineWebber, Inc. and John McFerran shall be and hereby are jointly and severally liable for and shall pay to the Claimant the sum of \$650 (**six hundred fifty dollars**) as reimbursement of costs.
4. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) sessions x \$500 = \$1,500 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Joan M. Roberts.

Respondents PaineWebber, Inc. and John McFerran shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$1,000 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall assess against Respondent PaineWebber, Inc. the non-refundable member surcharge in the amount of \$300. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

/s/ Anthony J. Kohler, Esq.
Anthony J. Kohler, Esq.
Public Arbitrator, Presiding Chair

Dated: May 2, 1997

/s/ Jerry Alan Donley, Esq.
Jerry Alan Donley, Esq.
Public Arbitrator

May 2, 1997

/s/ Danny R. Neuschwanger
Danny R. Neuschwanger
Industry Arbitrator

May 5, 1997